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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,231	08/05/2003	Richard Wisniewski	2035.015B	6527
23405	7590	03/09/2005	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI PC			SOOHOO, TONY GLEN	
5 COLUMBIA CIRCLE			ART UNIT	
ALBANY, NY 12203			PAPER NUMBER	
			1723	
DATE MAILED: 03/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,231

Applicant(s)

WISNIEWSKI, RICHARD

Examiner

Tony G. Soohoo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4-5-2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-7, 9-10, 12-13, 15-17, 19, 22-25, 27-30, 32-33, 35-40, 42-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Whisson 5624185.

The Whisson reference discloses a method and apparatus whereby the portable movable platform 11 and bio-materials within the container (bag) secured to the tray base 12 may include pharmaceutical material in the blood bag container is operable to skew relative to platform 11. It is noted that the operation of the drive mechanism provides an operation of alternately lifting sides of the base tray 12 so that it is tilted and skewed.

With regards to apparatus claims 1-8, 11-21, it is noted that the claim language to the orientation of the container is merely functional and does not provide a positive recitation of a drive to produce the movement. This is evidenced by the claim to a drive in dependent claim 9, 10, and 22-23.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1723

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-5, 14, 18, 20, 26, 31, 34, 41, rejected under 35 U.S.C. 103(a) as being unpatentable over Whisson 5624185.

The Whisson reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the amount of tilt whereby the container is being able to tilt 45 degrees as recited in claims 4-5, 14, 18, 20, 26, 31, 34, 41; and the exception of the container being of a shape as recited in claims 11 and 19, 29.

With regards to the amount of tilt, such a degree of tilt merely directed to an optimal range of motion to a person having ordinary skill in the art in shaking devices.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the motion drive of the device to tilt the container to a degree of 45 degrees as recited in the claims so that the motion of shaking is optimized for the greatest range of shaking, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With regards to the shape of the container, the recited shapes as recited in the claims are old and well known in the art of fluid containers and bags. The shape of the bag is nothing more than one of numerous configurations a person of ordinary skill in the art would modify in order to provide a more advantageous or easily constructed bag system to hold the fluid and to securely sit in the tray 12 since it has been held that,

Art Unit: 1723

absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

5. Claims 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whisson 5624185 in view of Martin et al 5577837.

The Whisson reference discloses all of the recited subject matter as defined within the scope of the claims with the exception a temperature control heating element to control the temperature of the material to be processed.

The Martin (et al) reference discloses that a shaker mixer device 110 within a portable platform housing 106 may be provided with a temperature control unit 160, 162 so that the temperature of the bio-medical material to be processed in the container 116 is controlled to a desired profile.

In view of the teaching by Martin that a mixer shaker device which holds a bio-medical container may be provided with a device to control the temperature so that the material to be processed is maintained a desired temperature for processing, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the device and method of Whisson with a device to control the temperature so that the material to be processed is maintained a desired temperature for processing.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Karause et al 2552188, Bishop 3478666, Kerr-lawson 2804777,

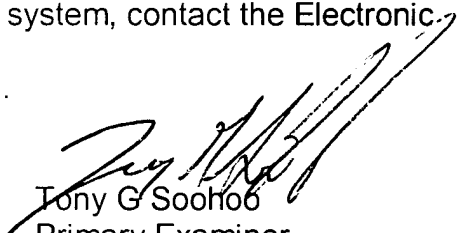
Art Unit: 1723

Greenberg 1739587, Koblo 3822865, Kishimoto 5639160, Reynolds et al 5921676, Brigolle 4929087, Greenberg 1739587, Thieme 1100852.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo
Primary Examiner
Art Unit 1723
